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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	KENEALY, D	ATTORNEY DOCKET NO.
EDWARD R. WEBER		F3M1/0624		

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EXAMINER

3301

ART UNIT 06/24/94 NUMBER

11

DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☐ Responsive to communication filed on _____ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), ~ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|---|---|
| 1. <input checked="" type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input type="checkbox"/> Notice re Patent Drawing, PTO-948. |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449. | 4. <input type="checkbox"/> Notice of Informal Patent Application, Form PTO-152 |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____ |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-22 are pending in the application.
Of the above, claims _____ are withdrawn from consideration.
2. ☐ Claims _____ have been cancelled.
3. ☐ Claims _____ are allowed.
4. ☒ Claims 1-22 are rejected.
5. ☐ Claims _____ are objected to.
6. ☐ Claims _____ are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).
12. ☐ Acknowledgement is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6, 8 and 14-16²² are rejected under 35 U.S.C. § 102(b) as being anticipated by Laguerre, British Patent 1,061,321. Laguerre discloses a device that comprises a flexible transparent "face shield", 5a, that is shaped as a bag. The bag is mounted onto a frame portion, 1a-4a, which mates with the inside edges of the bag. The frame has a "handle" portion, 1a, which extends from the bag. - DJK

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 7, 9, 11-13, 17, 19 are rejected under 35 U.S.C. § 103 as being unpatentable over Laguerre in view of Barker, GB patent

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2,039,406. Laguerre discloses everything in applicant's invention except for the design on either side of the bag, the material of the bag, and the frame being made from wire. Barker teaches the use of wire for a frame as well as the use of indicia on either side of the flexible bag. The choice of synthetic materials for comprising the bag is considered an obvious design choice. Synthetic flexible bags are well known in the art and are probably the exact type of bag that Laguerre intended for use with his device but decided it trivial to disclose. It would have been obvious to have used a wire frame instead of the plastic frame in Laguerre because if one had desired a more durable frame that is more difficult to break, one could have looked to Barker to see that wire is well known to be used in frame supports for sign devices. It also would have been obvious to have placed a design on the bag of Laguerre if one had wanted to communicate something to an observer, as taught by the Barker device.

Claims 5,10,18,20 and 21 are rejected under 35 U.S.C. § 103 as being unpatentable over Rubin in view of McCosker and Favory. Rubin discloses everything in applicant's claims except for the device being hand held and supported by a frame. If one desired, for aesthetic reasons, to hold the Rubin device up by hand instead of securing it to the ears, one could have looked to McCosker and Favory to see that a frame would allow such securement. It is not believed to have beyond one skilled in the art to have placed the Rubin device onto a frame. Rubin's device is used in the same

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manner as applicant's device and for the same purpose, to provide a sanitary kissing shield barrier. The essence of applicant's invention is disclosed by Rubin and it is believed that to have placed Rubin onto a hand-held frame would have been obvious. Many shielding devices are secured by a hand-held frame. McCosker teaches how to install a hand held frame into a pocket formed by two flexible sheets of material. It is believed to have been obvious to have modified the Rubin device so that it could accept a frame for being hand held because if one had desired such a handle, one could have looked to McCosker to see that one would only need to form a pouch with the Rubin device and place a frame within that pouch to provide a hand-held kissing shield. Favary teaches the use of a peripheral frame for allowing an open area in the center of the shield portion. One skilled in the art would have known to have used a frame with a central opening instead of the solid tongue of McCosker if one had desired the center of the shield to remain functional.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Kenealy whose telephone number is (703) 308-2680.

DK
David J. Kenealy
June 13, 1994

Robert A. Kenealy
ROBERT A. KENEALY
S.P.E.
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